

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9702 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? :

FAKIRBHAI BHAGWANJI PATEL

Versus

MAMLATDAR

Appearance:

MR JB PARDIWALA, for Petitioners
MS DS PANDIT, A.G.P. for Respondent Nos. 1,2 & 4
Respondent No.3 unserved as refused.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/02/2001

ORAL JUDGEMENT

Rule. Ms.Pandit waives service of rule. By
consent of counsels for both the parties, this petition
is taken up for final hearing today.

2. There is no dispute that the petitioners are

owners and were in possession of the disputed parcel of land and vide order dated 31 December, 1999 the Mamlatdar acting under the Mamlatdar Courts Act, 1906 by virtue of powers under Section 5 of the said Act, directed the petitioners to clear the said parcel of land for the purposes of putting the said land to use by public as road for commuting between two villages. The petitioners approached the appellate authority but failed as the Dy. Collector exercising power under Section 23(2) of the said Act vide order dated 30/06/2000 confirmed the order dated 31 December, 1999. Both these orders are under challenge in the present petition.

3. In view of the fact that while appellate proceedings were pending, the State Government had already taken a decision to construct a road from Nani Bhagal to Gamtal and Bhagal to Nani Bhagal by District Panchayat and construction of such road should be completed by March 2001, the learned A.G.P. has placed report by Mamlatdar, Valsad, namely, Respondent No.1 which states that more than 3/4 of such road has already been constructed and the remaining portion is also ready in as much as the affected villagers have already started using the road which is of a shorter distance.

4. In view of these circumstances and the subsequent facts which are taken on record by way of Mamlatdar's report, this petition requires to be allowed. The orders passed by the Mamlatdar, Valsad dated 31st December, 1999 and by Dy. Collector dated 30/06/2000 are hereby quashed and set aside. Respondents are directed to permit the petitioners to fence the said land i.e. at their own cost as it was existing prior to order dated 31st December, 1999.

5. This petition is accordingly allowed. Rule made absolute with no order as to costs.

(D.A. Mehta, J)
(Katira)